

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

Timothy Briggs,

Case No. 1:22CV803

Plaintiff,

JUDGE PAMELA A. BARKER

-vs-

Magistrate Judge James E. Grimes, Jr.

**Kilolo Kijakazi, Acting
Commissioner of Social Security,**

**MEMORANDUM OPINION
AND ORDER**

Defendant.

This matter is before the Court upon the Report and Recommendation of Magistrate Judge James E. Grimes, Jr. (Doc. No. 10), recommending that the decision of the Commissioner be reversed and remanded for further proceedings. The Commissioner filed a Response indicating that she will not be filing Objections. (Doc. No. 11.) For the following reasons, the Report and Recommendation (Doc. No. 10) is ADOPTED. The decision of the Commissioner is VACATED and the case is REMANDED for further consideration consistent with the Report & Recommendation.

I. Background

On May 17, 2022, Plaintiff Timothy Briggs filed a Complaint (Doc. No. 1) challenging the final decision of the Defendant Commissioner of Social Security (“Commissioner”), denying his application for Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act, 42

U.S.C. §§ 416(i), 423, and 1381 *et seq.* (“Act”). Pursuant to Local Rule 72.2(b), the case was referred to Magistrate Judge Grimes.¹

On January 18, 2023, the Magistrate Judge issued a Report and Recommendation, in which he found that the ALJ erred when he failed to include crutches in the Residual Functional Capacity (“RFC”) or sufficiently explain why he omitted them. (Doc. No. 10.) The Magistrate Judge, therefore, recommended that the decision of the Commissioner denying McCormick’s application for benefits be reversed and the case remanded for further proceedings consistent with the Report & Recommendation. (*Id.*) Objections to the Report and Recommendation were to be filed within 14 days of service. On February 1, 2023, the Commissioner filed a Response indicating that she would not be filing Objections to the Report and Recommendation. (Doc. No. 11.)

II. Standard of Review

The applicable standard of review of a Magistrate Judge’s Report and Recommendation depends upon whether objections were made to that report. When objections are made, the district court reviews the case *de novo*. Specifically, Federal Rule of Civil Procedure 72(b) states in pertinent part:

The district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instruction.

Although the standard of review when no objections are made is not expressly addressed in Rule 72, the Advisory Committee Notes to that Rule provide that “[w]hen no timely objection is filed, the

¹ The docket reflects that this matter was initially referred to Magistrate Judge Darrell Clay on May 17, 2022. On September 21, 2022, this matter was reassigned to Magistrate Judge Grimes pursuant to General Order 2022-16 with Automatic Reference of Administrative Action pursuant to Local Rule 72.2.

court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” See Fed. R. Civ. P. 72, Advisory Committee Notes. Moreover, in *Thomas v. Arn*, 474 U.S. 140, 150 (1985), the United States Supreme Court explained that “[i]t does not appear that Congress intended to require district court review of a magistrate judge’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”

III. Analysis and Conclusion

Here, as stated above, the Commissioner has indicated that she will not be filing objections to the Report and Recommendation of Magistrate Judge Grimes that the decision of the Commissioner be reversed and the case remanded. This Court has nonetheless carefully and thoroughly reviewed the Report and Recommendation and agrees with the findings set forth therein. The Report and Recommendation of Magistrate Judge Grimes is, therefore, ADOPTED. The decision of the Commissioner denying Plaintiff’s application for DIB is VACATED and the case is REMANDED for further proceedings consistent with the Report & Recommendation.

IT IS SO ORDERED.

Date: February 1, 2023

s/Pamela A. Barker
PAMELA A. BARKER
U. S. DISTRICT JUDGE